IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO. 347 of 2004

Judgment reserved on: 30.8.2011.

Date of decision: 1.9.2011.

Ishwar Singh (dead) through LRs ….Petitioners

Versus

State of H.P. and others ….Respondents

Coram

The Hon'ble Mr.Justice Deepak Gupta, J.

Whether approved for reporting?[1] *No*

For the petitioners:	Mr.G.D. Verma, Senior Advocate with Mr.B.C. Verma, Advocate.
For the respondents:	Mr.Vivek Singh Thakur, Addl.A.G. with Mr.Rajesh Mandhotra, Dy.A.G. for respondents No.1&2.
	Mr.B.S. Attri, counsel for R-3.
	Mr.Y.Paul and Mr.Dinesh Kumar, counsel for respondents No.4,6 and 8.

Deepak Gupta, J.

1. By means of this petition, the petitioner has challenged the order of the learned District Judge, Solan dated 12.7.2004 passed in Execution Petition No.19-S/10 of 2002.

2. Briefly stated, the facts of the case are that the petitioner Ishwar Singh is the real brother of late Sh.Bhagwan Singh @ Bhagwanu. It is not disputed that some land jointly owned by the brothers and other co-owners was acquired for setting up of the Dr.Y.S. Parmar University of Horticulture and Forestry at Nauni. Two

[1] *Whether the reporters of local papers may be allowed to see the Judgment? Yes.*

reference petitions being Petition No.4-S/4 of 1977 and Reference Petition No.77-S/4 of 1977 were filed. The first petition was filed only by Sh.Bhagwanu and the second petition was filed by Sh.Bhagwanu and Ishwar Singh both. In the petition filed by Sh.Bhagwanu and Ishwar Singh, Muna Ram, Roop Ram and Kishan Lal three other brothers were impleaded as performa respondents. It is not disputed that the claim was in respect of land in village Jaganzi. The claim petitions were allowed. Appeals were filed in the High Court which were first allowed and the matter remanded. Thereafter, again compensation was enhanced by the reference Court. The appeals filed against this award were RFA Nos.272 of 1991 and RFA No.281 of 1991. These appears were disposed of vide judgment dated 19.5.1994.

3. According to the petitioner Ishwar Singh, some amount was released in his favour but without any order of the Court the entire compensation in one RFA was released in favour of the private respondents and they have been paid more than the amount due to them.

4. The petitioner had filed an execution petition against the private respondents which has been

dismissed by the learned District Judge only on the ground that the petitioner led no evidence to show that the entire deposited amount in the High Court has been withdrawn by respondents No.4 to 13 or that he has not withdrawn any amount of money out of the said deposited amount. Therefore, according to the learned District Judge it cannot be said that respondents No.4 to 13 have withdrawn money in excess of their shares.

5. During the pendency of this petition, a report of the Registry was called for which is on part-B of the file and as per this report dated 4.4.2011 Sh.Bhagwanu was the sole petitioner in land reference No. 4-S/4 of 1977 and his legal representatives were brought on record and the amount of Rs.4,72,444/- deposited in RFA No.272 of 1991 alongwith interest accruing thereupon was released in favour of the legal hairs of Bhagwanu without any orders of the Court. In RFA No.281/1991 a sum of Rs.24,569/- was deposited and this amount alongwith interest accrued thereupon was paid to Sh.Ishwar Singh. The dispute raised is that Ishwar Singh was entitled to a much higher amount.

6. It is well settled law that when a reference is sought by one of the co-owners it inures for the benefit of all co-owners. The Apex Court in **A.Viswanatha Pillai and others vs. Special Tehsildar for Land Acquisition No.IV and others, AIR 1991 SC 1966,** clearly held that one co-owner acts on behalf of the entire body of co-owners and when one of the co-owner seeks reference then all the other co-owners are entitled to the benefit of the same.

7. In the present case, as pointed out above, one reference petition was filed by two brothers in which other brothers were made performa respondents but Bhagwanu also filed a separate reference petition. It appears that nobody bothered to ever find out what was the exact share of the brothers in the entire land despite the fact that the Land Acquisition Officer in accordance with the provisions of Section 90 of the Act had framed a statement in accordance with Para 55 of the Standing Order No.28 in which the shares of various co-sharers in different khatas, khewats and khataunis were specifically recorded. I have seen that in record of both the land reference petitions these statements have been filed. None of the co-

owners ever challenged the apportionment made by the Land Acquisition Officer and no reference under Section 30 was sought. Therefore, it is apparent that nobody disputed the statement made under para 55 of Standing Order No.28.

8. In view of the above discussion, it is apparent that the Executing Court has to re-determine the shares of the parties in accordance with the statement made by the Land Acquisition Officer under para 55 and then find out whether all the co-owners have been paid the amount in accordance with their shares or not. In case excess amount has been paid to any co-owner and some co-owner has been paid a lesser amount then the co-owner who has been paid excess amount shall be liable to refund the excess amount alongwith interest @ 12% p.a. to the co-owner who has been paid a lesser amount.

9. The order of the learned District Judge was erroneous since from the facts on record it is obvious that a major portion of the amount has been taken by the heirs of Bhagwanu. As such the order of the learned District Judge is set-aside and the matter is remanded to the learned District Judge. The report of the Registry shall also be sent to the learned District Judge who

shall determine the shares of all the co-owners in accordance with the statement framed by the Land Acquisition Officer under Para 55 of the Standing Order 28 and he shall determine the compensation payable to all the co-owners as per their shares and act in accordance with the directions issued hereinabove. Since the matter is a very old one the learned District Judge is directed to ensure that the entire process is completed latest by 31st March, 2012. The petition is allowed in the aforesaid terms. No costs.

September 1, 2011 **(Deepak Gupta)**
PV ***Judge***